

UNITED STATES FOREIGN INTELLIGENCE SURVEILLANCE  
COURT OF REVIEW

Order No. 1

It is hereby, ORDERED, that the rules set forth  
in the attachment entitled:

Rules for United States Foreign Intelligence  
Surveillance Court of Review  
are hereby adopted and promulgated as the Rules of  
this Court.

Per Curiam

George E. MacKinnon  
George E. MacKinnon, Presiding Judge

James Barrett, Circuit Judge

Leon Higginbotham,  
Leon Higginbotham, Circuit Judge

FILED  
JOSEPHINE THOMAS, Clerk

JAN 22 1980  
U.S. Foreign Intelligence  
Surveillance Court

RULES FOR UNITED STATES  
FOREIGN INTELLIGENCE SURVEILLANCE  
COURT OF REVIEW

Rule 1. Name of Court

This court, established pursuant to the Foreign Intelligence Surveillance Act of 1978, P.L. 95-511, October 25, 1978, 92 Stat. 1783 (hereinafter referred to as the Act), shall be known as the United States Foreign Intelligence Surveillance Court of Review.

Rule 2. Clerk of Court

The clerk of court shall maintain the docket, the records, decisions, orders, and seal of the court and shall have the usual powers of a clerk of a United States Court of Appeals as they may be applicable to this court. The court may appoint as clerk, the clerk of the United States Foreign Intelligence Surveillance Court who may serve in both capacities.

Rule 3. Legal Officer; Clerical Employments

The court may designate its Legal Officer and other employees from among the employees also serving the United States Foreign Intelligence Surveillance Court. Such employees shall be subject to all directions of this court except that should any question of conflicting responsibility arise, the same shall be resolved by the presiding judges of the two courts.

Rule 4. Duties of Presiding Judge

The presiding judge, designated by the Chief Justice of the United States from among the membership of the court, shall (a) be responsible for allocating the business of the court to the judges

thereof on an equitable and impartial basis, including any filed opinions of the court, (b) be responsible for calling the judges to sit from time to time as business requires, and (c) be responsible for placing matters before the judges for collegial consideration such as administrative actions and amendments of these rules.

**Rule 5. Powers of the Court**

(a) Except as otherwise provided herein, or by the Foreign Intelligence Surveillance Act of 1978, (92 Stat. 1783 et seq.), the statutes and Federal Rules of Appellate Procedure prescribing the jurisdiction, authority and procedures of the United States Courts of Appeal shall apply mutatis mutandis to this Court.

(b) A majority of the number of judges authorized to constitute the Court of Review, as provided in section 103(b) of the Act, shall constitute a quorum. Procedural motions may be accepted and acted upon by the Presiding Judge or by any one judge of this Court so designated to act in recess by the Presiding Judge or by the court.

(c) Upon motion of the United States filed with the Clerk of the United States Foreign Intelligence Surveillance Court the Court shall expeditiously review the denial, by the United States Foreign Intelligence Surveillance Court established pursuant to section 103(a) of the Act, of any application made under the Act. A suggested form of a motion of review follows these Rules.

See Form 1. Upon filing of a motion for review the clerk of the United States Foreign Intelligence Surveillance Court

shall immediately notify the Court of Review of said motion and, as prescribed in section 103(a) of the Act, shall transmit the original record, under seal, to the Court of Review.

(d) In the event the Court of Review determines that the application was properly denied, or improperly denied, it shall immediately provide for the record a written statement of reasons for its decision in a written decision to be filed with the clerk, together with any concurring or dissenting opinion. The court may in lieu of making such a finding, remand the matter to the United States Foreign Intelligence Surveillance Court to hear further evidence, to modify its findings or opinions, or to make additional findings consistent with applicable law and the order of this court. In the event that the proceedings on any such remand further result in a denial of such application in the United States Foreign Intelligence Surveillance Court, the complete record, including all exhibits, documents, tapes, etc., shall again be transmitted under seal to this court with such further written statement for such decision as may be appropriate.

**Rule 6. Review Proceedings**

The court shall consider the record transmitted under seal to it pursuant to section 103(a) and also any written brief to be filed by the United States of no more than 20 pages, to be filed within 10 days from the filing of the motion for review, unless permission is granted on motion to file a more extensive brief. The court will allow oral argument by the duly authorized

attorney for the Government unless otherwise provided in the court order. The time given for oral argument shall be subject to regulation by the court in each instance, which notice of time allowed shall be communicated to the attorney for the Government reasonably in advance of such hearing.

**Rule 7. Mandate**

Any written decision of the court duly certified as such and filed by its clerk shall be considered its mandate unless the court issues no decision, in which case its dispositive order shall be considered its mandate, shall so state, and be similarly certified and filed. Unless otherwise ordered such mandate shall issue immediately following the decision of the court. The court shall recall its mandate in the event that the United States files and is granted a motion for a stay pursuant to section 2101(f) of title 28, United States Code, for the purpose of filing a petition for a writ of certiorari pursuant to section 103(b) of the Act. Such motion shall be filed promptly and shall be promptly acted upon by a judge of the court regularly authorized or designated to hear motions in recess, or by the full court. A recall of mandate may be similarly acted upon.

**Rule 8. Petition for Writ of Certiorari**

On the filing of a petition for a writ of certiorari by the United States, the record shall be transmitted under seal to the Supreme Court pursuant to section 103(B) of the Act. Such procedures after such filing shall be governed by the Rules of the Supreme Court and any special security procedures adopted by that Court.

**Rule 9. Attorneys**

Only those attorneys who have been duly admitted to the bar of any United States Court, and who have been duly certified by the Attorney General as eligible to practice before the United States Foreign Intelligence Surveillance Court will be permitted to represent the Government as attorneys before the bar of this court. Such attorneys shall have controlling responsibility for representing the Government on all matters before the Court but in their discretion they may be assisted by attorneys and personnel of applicant agencies as may be required in connection with particular applications.

**Rule 10. Judgments and Orders**

The style of the judgments and orders of the Court shall be as set forth in Form 2.

**Rule 11. Security**

All activities and records of proceedings in this court under the Foreign Intelligence Surveillance Act, including applications made and granted, shall be conducted and maintained under the security measures established by the Chief Justice in consultation with the Attorney General and the Director of Central Intelligence as provided by Section 103(c) of said Act.